

MEMORANDUM

Office of City Manager



To: Charlie Lawson, Acting City Manager
From: Principal Analyst, Cindy Maxwell
Subject: Updated Library Operations Analysis
Date: June 14, 2005

Purpose

This updates a previous report describing Milpitas library operations and funding as a basis to begin consideration of the value and structure of Milpitas library services.

Recommendation

Authorize a budget appropriation and direct staff to issue a Request for Proposals to evaluate alternative operating models for the City Council's consideration.

Summary

- Organization: Milpitas is a member of the Santa Clara County Free Library District serving 400,000 residents, nine cities and the unincorporated County. The District is governed by a JPA with an eleven member Board of Directors. Milpitas has one seat and one vote on the Board.
- Revenues: The District's current operating budget is \$25.7 million. Property taxes fund over half the budget. A benefit assessment (parcel tax) funds another 21% and will expire in July 2015.
- Expenditures: Two thirds of the existing budget is used for personnel and less than 12 percent for augmenting the library collection.
- Funding Formula: Expenditures for member libraries are determined by a formula using population, assessed value and circulation. Though Milpitas has the largest population of all member jurisdictions, it does not have the largest funding share. The share is reduced by a large deduction for redevelopment revenue and a small credit for unincorporated population.
- Comparisons: The Milpitas library operation was compared to four other independently operated libraries that are similar in size to the library Milpitas will construct: Cerritos (Southern California), Mountain View, Pleasanton, and Sunnyvale. Findings:
 - Even though the collection, operating hours and size of the current Milpitas library building (19,500 building square feet) are significantly smaller than the four sample libraries, it circulates almost twice as many items on a per capita basis and three times as many as the national average.

- Milpitas' annual estimated budget is lower than the surveyed cities. However, the estimate may not include the full cost for central services (administration and technical support) that is reflected in the surveyed cities.
- Expenditures for personnel and materials for the District and for Milpitas are comparable to the surveyed cities.
- Major Issues:
 - Uncertain funding.
 - Local control.
 - Community support.
- Other Issues
 - New technology costs and benefits.
 - Unincorporated service area cost.
 - Alternative operating systems.

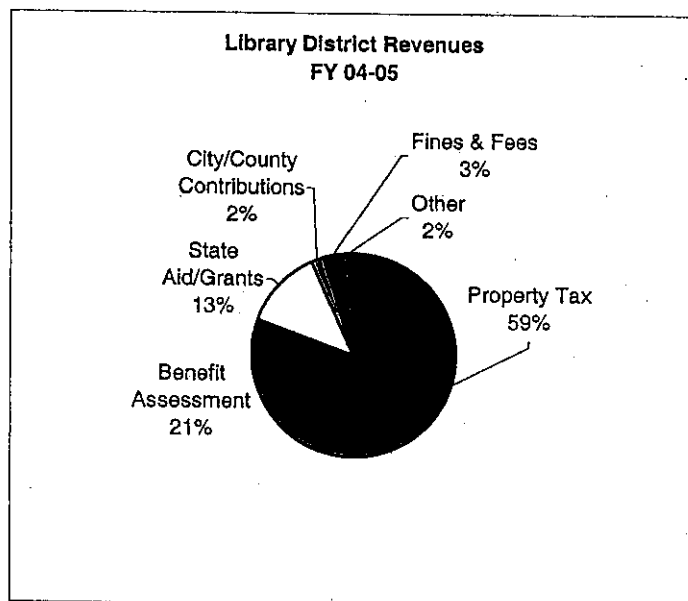
Current Organization

The Milpitas Library is a member of the Santa Clara County Free Library District. The District serves over 400,000 residents in the unincorporated County, Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Milpitas, Monte Sereno, Morgan Hill and Saratoga. District services are governed by a Joint Powers Authority (JPA) consisting of representatives from each of the member agencies. The JPA oversees the District budget and sets operational policies for all District libraries.

Revenues

The Library District's operating budget for the current fiscal year (FY 2004-05) is \$25.7 million. Almost 60 percent of the budget derives from property taxes and 21 percent from a parcel tax ("benefit assessment").

Chart 1



City staff estimates that about 15% of the overall current revenue is attributable to Milpitas' library and jurisdiction:

Table 1
Milpitas Portion of District Revenues
FY 2004-05

Revenue	District Revised	<u>Estimated</u>¹ Milpitas
Property Tax	\$15,315,000	\$ 2,669,404 ²
Benefit Assessment	\$ 5,375,000	\$ 899,047
State Aid/Grants ³	\$3,301,180	\$ 26,000
City/County Contributions ⁴	\$ 521,000	\$ 0
Fines & Fees ⁵	\$775,000	\$ 110,837
Other	\$440,000	\$ 76,692
Total	\$25,727,180	\$ 3,781,980

Donations from the Friends of the Milpitas Library (FOML) are not included in Table 1 or tracked as a revenue or expenditure unless it is a direct cash donation. FOML funding is used for library programming (i.e., summer reading program) and incidental purchases (i.e., chairs for the community room). FOML activities have raised between \$23,000 to \$29,000 annually since 2001.

Benefit Assessment

Approximately 21%, or over \$5 million, of District revenues are derived from a parcel tax. The majority of the proceeds are allocated back to the operation of member libraries: 70% for Personnel and 20% for Collections. The remaining 10% is retained by the County to cover materials processing and administrative costs. Milpitas is projected to generate almost \$900,000 this fiscal year:

¹ Except for "Benefit Assessment" and "Fines/Fees", revenue is estimated using the funding formula to determine Milpitas' pro rata share.

² Approximately \$180,000 of this amount is dedicated to the County library employee retirement program. Tax rate .00240/\$100 valuation

³ Homeowner Property Tax Relief, Vehicle In-Lieu Fee, California Library Services Act (CLSA compensates District for literacy services and nonresident use of library).

⁴ Los Altos supplements the budget for added library days and hours.

⁵ Primarily for literacy programs.

Table 2
Milpitas Benefit Assessment
FY 2004-05

Purpose	Revenue & Expenditure	% of Total
Personnel	\$629,333	70%
Collections	\$179,809	20%
Admin.	\$89,905	10%
Total	\$899,047	100%

Other than the unincorporated county, Milpitas generates the largest benefit assessment revenue in the Library District.

Table 3
Benefit Assessment Revenue Generation
FY 2004-05

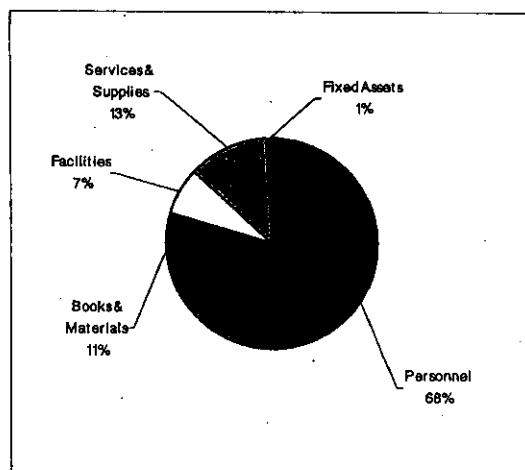
Agency	Revenue	Percent of Total
Alum Rock	\$348,954	6.5%
Campbell	496,958	9.2%
Cupertino	684,147	12.7%
Gilroy	495,767	9.2%
Los Altos/Woodland	458,879	8.5%
Milpitas	899,047	16.7%
Morgan Hill	407,591	7.6%
Saratoga/Monte Sereno	412,623	7.8%
Unallocated County	1,117,034	21.8%
Total	\$5,375,000	100.0%

The benefit assessment sunsets in July 1, 2005. However, earlier this month, voters reauthorized the tax at its current level to begin July 1, 2005. The benefit assessment is imposed as an annual tax on parcels located within member jurisdictions or the unincorporated portions of Santa Clara County. Residential property owners currently pay \$33.66 per parcel. A formula, based on assumed library benefit value, is used to calculate the tax for nonresidential parcels.

Expenditures

Over two-thirds of the current library district budget is for personnel (i.e., salaries, benefits) and less than 12 percent is used for augmenting the library collection.

Chart 2
**Library District Approved Budget
FY 2004-05**



District budget expenses are only directly attributable to member cities by Salaries (a.k.a. "Personnel") and Books (a.k.a. "Collection" or "Books & Materials"). Other budget line items are charged directly to Central Services. Expenditures attributable to Milpitas were estimated using the JPA formula share of 17.43%.

Table 4
**Library District and Milpitas Approved Budget
FY 2004-05**

Expenditure ¹	District Revised FY 2004-05	Milpitas Estimated ² Costs
Personnel	\$ 17,552,377	\$2,197,771
Books & Materials	\$ 2,864,500	\$ 492,627
Facilities	\$ 1,920,580	0
Services & Supplies	\$ 3,236,169	\$ 564,064
Fixed Assets	\$ 153,554	\$ 26,764
Total³	\$ 25,727,180	\$ 3,281,226

¹ Reserves not shown.

² Budget for Services/Supplies and Fixed Assets is estimated using the funding formula to determine Milpitas' pro rata share.

³ Does not include \$1,890,600 from local property taxes to fund the library employee retirement program.

Funding Formula

Expenditures for member libraries are determined through a funding formula that has been in place since 1985 and is outlined in the JPA agreement. The formula uses three equally weighted factors:

- Population – January 1 estimate from the State Department of Finance plus any population allocation to the jurisdiction for service to unincorporated residents.
- Assessed value – Minus any redevelopment revenue to the agency plus allocated unincorporated value.
- Circulation – Annual circulation of all materials during the previous fiscal year.

The funding formula calculation for the current fiscal year is detailed in Attachment A.

Milpitas' proportionate share of the District budget continues to rise each year. However, though Milpitas may have the largest population of all member jurisdictions, it does not have the largest funding share. Its share is reduced by a large deduction for redevelopment revenue and small credit for unincorporated population.

Table 5
Library District Formula Share
FY 2004-05

Jurisdiction	Formula Share
Alum Rock	4.50%
Morgan Hill	8.68%
Gilroy	10.00%
Campbell	11.75%
Saratoga	12.31%
Los Altos	16.62%
Milpitas	17.43%
Cupertino	18.71%

The District provides a basic level of service related to the number of hours and days a library is open for service. Any service beyond that base level is allocated to the member agency based on the funding formula and any additional funding the agency chooses to provide. Currently Los Altos is the only city providing supplemental funding for additional service hours.

Comparison With Other Libraries

The performance and operating costs of four independently operating libraries were compared to Milpitas' library services. The four cities and their libraries are similar in size to the library Milpitas plans to construct:

Table 6
Comparable Libraries

City	1/1/03 Population	Library Building Size
Milpitas	65,000	60,000
Cerritos	54,200	88,000
Mtn. View	72,000	60,000
Pleasanton	67,000	30,000
Sunnyvale	132,500	65,350

Operations

Table 7 indicates, even though the current Milpitas library building (19,500 building square feet) is significantly smaller than the four sample libraries, its collection size, operating hours, circulation, and number of visitors during the fiscal year (FY 2002-03) was comparable or on the high side (circulation):

Table 7
Operational Characteristics

City	Collection Size	Average Hours Open/Week	Circulation	Visitors
Milpitas	181,553	60	1,977,003	717,713
Cerritos	210,101	65	983,373	1,173,171
Mtn. View	264,771	77	1,097,145	665,962
Pleasanton	173,566	60	969,883	467,867
Sunnyvale	257,091	73	1,996,562	886,979

In fact, Table 8 illustrates that the Milpitas Library, on a per capita basis, circulates almost twice as many items than the surveyed libraries and almost six times the national average:

Table 8
Circulation per Capita

City	Circulation per Capita
Milpitas	30.42
Cerritos	18.14
Mtn. View	15.24
Pleasanton	14.48
Sunnyvale	15.07
National Average ¹	5.3

Expenditures

The annual budget for the Milpitas Library is estimated to be second lowest of the surveyed cities. However, the estimate for Milpitas does not include the full cost of operating administrative and technical functions to support the library at the Headquarters office. Library headquarters consists of 51.4 FTE or 20% of the total Library District workforce with a budget of \$4,750,872. The only direct cost to Milpitas for Headquarters services is \$89,905 or 10% of the Milpitas benefit assessment.

Table 10
FY 2002-03 Budgets

City	Estimated Expenditures
Milpitas	\$3,281,226
Cerritos	\$4,372,918
Mtn. View	\$3,995,564
Pleasanton	\$3,190,614
Sunnyvale ²	\$6,182,006

¹ 2004 Hennen's American Public Library Ratings. Over 9,000 surveyed libraries. Libraries serving population between 50,000 & 99,999.

² Sunnyvale's library budget includes the operation of a Patent Office at a cost of \$458,081 for FY 2003-04.

Expenditures for Personnel and Books/Materials for the Library District and for Milpitas are comparable to the four surveyed cities. The expenditures for Milpitas, shown in Table 11, is lower than the surveyed cities because it does not include costs for all Administration and Materials Processing staff.

Table 11
Personnel and Materials

Agency	Total Budget FY 2002-03	
	Personnel	Books & Materials
Milpitas ¹	\$1,950,737	\$580,765
Cerritos	\$2,998,107	\$719,944
Mtn. View	\$3,384,034	\$403,130
Pleasanton	\$2,166,819	\$352,300
Sunnyvale	\$3,902,511	\$691,503

Staffing

Except for Pleasanton, staffing levels of the current Milpitas library is significantly less than those at the larger libraries. However, the Milpitas number represents only employees working at the library. It does not include services provided at the District headquarters office for administration and technical services.

Table 12
Staffing Levels

City	Full Time Equivalent	Librarian Full Time Equivalent ²
Milpitas	35.00	11.00
Cerritos	59.50	11.00
Mtn. View	54.00	17.50
Pleasanton	34.80	11.00
Sunnyvale	64.76	26.52

¹ Formula share only. Does not include all costs for District-wide materials processing and administration.

² Number of persons reported working as Librarian, with or without a graduate degree in library science. Includes library director.

Major Issues

- Uncertain funding: Library services are supported by funding from a variety of revenue sources. There is considerable uncertainty about funding because of the volatile State budget and slow economy.
- Local control: As a member of the Library District, the operating policies of the Milpitas Library are governed by the JPA Board. Milpitas has one representative on the eleven-member board (currently Councilmember Giordano). As a member of the JPA contracting for County library services, member jurisdictions do not have absolute authority over operating hours and policies. A significant issue arose in Fall 2004 when the District closed all libraries on Monday and declined to consider Milpitas' interest in providing supplemental funding to keep the Milpitas Library open on Mondays.
- Community support: As the Library building project has progressed, interest from the general public has grown. Clearly, Milpitas residents highly value their library services.

However, there may be reluctance to support fundraising activities on the library's behalf. Organized efforts have experienced no growth: the Friends of the Milpitas Library (FOML) maintains the relatively same fundraising activity level as in past years. Additionally, there has been little community interest to form a library foundation to support the building project.

A recent election may also be an indicator of community support for directly funding library services. Milpitas voters did not support two ballot measures that were on the May 2005 election. In fact, of the ten cities and unincorporated area in the Library District, Milpitas was the only jurisdiction whose voters defeated a request to reauthorize the existing parcel tax due to sunset on July 1, 2005. As indicated in Table 13, Measure A easily passed elsewhere in the district so the parcel tax will continue for another ten years.

A related item on the ballot, known as Measure B, asked voters if the parcel tax should be increased. Measure B was unable to obtain the required two-thirds majority from District voters. Again, though, of all JPA jurisdictions, Milpitas had the weakest support of Measure B. Milpitas' special election results may have been affected by a similar parcel tax measure that the Milpitas Unified School District had on the ballot just two months before.

Table 13
Special Election Results – May 3, 2005

Jurisdiction	Measure A % Support	Measure B % Support	Voter Turnout
Campbell	75.73%	67.51%	33.1%
Campbell	69.72%	60.30%	38.2%
Gilroy	68.88%	61.83%	32.1%
Los Altos	83.18%	75.84%	48.9%
Los Altos Hills	81.09%	74.30%	44.4%
Milpitas	60.30%	53.57%	29.2%
Monte Sereno	74.08%	64.99%	41.2%
Morgan Hill	75.07%	67.74%	36.1%
Saratoga	73.31%	64.34%	44.9%
Unincorporated	68.18%	60.85%	31.0%
Total	72.04%	64.23%	36.04%

Other Issues

- New technology: Library District staff is proposing to implement an automated sorting system. The plans for the new Milpitas library were revised to accommodate the space needs of the new equipment. The sorting system is a first step toward acquiring a Radio Frequency Identification (RFID) system. RFID will fully maximize the benefits of automation from the new sorting systems. RFID is a costly new technology for libraries that replaces barcodes with a radio frequency-based communication system. The JPA formed a committee that includes Milpitas' Information Services Director. The committee is studying the cost effectiveness of investing in RFID in the short term. It is expected that they will recommend the JPA complete a cost/benefit analysis on RFID.
- Unincorporated service area costs: As a member of the Library District, Milpitas shares the cost of providing services to outlying unincorporated areas such as Mount Hamilton and the Los Gatos foothills. The unincorporated service area has the largest population pool of residents in the JPA.

The unincorporated areas generate an estimated \$350,000 per year to reduce costs for administrative and material processing activities for all JPA members. However, some of these unincorporated areas present service delivery challenges that can significantly reduce efficiencies. For example, the District maintains and operates a mini-Bookmobile specifically to serve the Mount Hamilton area. About 20% of the library's materials are borrowed by residents in one of the largest concentrations of unincorporated areas in the County (extending from Mt. Hamilton to Morgan Hill). Though we share in these unincorporated service costs, Milpitas has by far the smallest allocation of unincorporated residents in the District (refer to Attachment A). Milpitas is allocated a share of \$251,323 of the benefit assessment budget for unincorporated services.

- Alternative operating systems: Over time the Milpitas City Council has periodically discussed the concept of withdrawing from the Library District and operating an independent city library. The process for withdrawal from the Library District is outlined in the JPA document and includes negotiations with the JPA Board on what equipment and materials would remain with the Milpitas Library. District staff estimates that the current collection (not including furniture and equipment) is valued at \$6,219,200. Other major considerations for independent operation include final disposition of funding sources, such as the benefit assessment revenue, and assumption of the administrative and technical (book processing and technology) responsibilities currently performed by Library District headquarters.

Conclusion

The findings and issues identified in this report indicate additional investigation of library service alternatives for Milpitas is appropriate. Particular attention should be paid to funding alternatives, experiences of other independently operating public libraries and potential impacts on the design and operation of the Milpitas Library building project.

Recommendation

Authorize a budget appropriation and direct staff to issue a Request for Proposals to evaluate alternative operating models for the City Council's consideration.

**Santa Clara County Library Formula
2005-06**

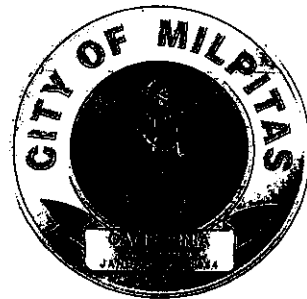
Attachment A

Library	Population 1-1-04	Percent	Assessed Valuation	Percent	Circulation	Percent	Formula Share	FY 04- 05
Alum Rock	24,520	6.635%	1,683,111,269	3.092%	323,674	3.290%	4.34%	4.50%
Campbell	38,200		4,569,795,226					
Unincorporated	9,552		1,584,635,719					
Redevelopment			-606,630,931					
RDA Credit			113,329,512					
	47,752	12.922%	5,661,129,526	10.401%	991,908	10.084%	11.14%	11.75%
Cupertino	52,600		9,526,841,379					
Unincorporated	4,522		466,117,602					
Redevelopment			-1,323,121					
	57,122	15.457%	9,991,635,860	18.357%	2,160,638	21.965%	18.59%	18.71%
Gilroy	46,200		4,655,273,697					
Unincorporated	8,648		1,093,899,230					
	54,848	14.842%	5,749,172,927	10.563%	454,251	4.618%	10.01%	10.00%
Los Altos	27,500		6,373,193,405					
Los Altos Hills	8,350		3,443,782,043					
Unincorporated	4,842		1,004,450,606					
	40,692	11.011%	10,821,426,054	19.882%	1,800,994	18.309%	16.40%	16.62%
Milpitas	64,600		9,338,956,876					
Unincorporated	352		64,829,737					
Redevelopment			-2,914,496,181					
RDA Credit			515,058,013					
	64,952	17.576%	7,004,348,445	12.869%	2,107,993	21.430%	17.29%	17.43%
Morgan Hill	35,500		4,809,751,984					
Unincorporated	8,604		1,731,528,414					
Redevelopment			-2,198,630,409					
RDA Credit			130,715,108					
	44,104	11.935%	4,473,365,097	8.219%	590,955	6.008%	8.72%	8.68%
Saratoga	30,300		7,393,857,738					
Monte Sereno	3,500		1,071,737,903					
Unincorporated	1,758		569,516,929					
	35,558	9.622%	9,035,112,570	16.600%	1,406,230	14.296%	13.51%	12.31%
Percentages based on assigned								
	Population		Assessed Valuation		Circulation			
Total	405,650		57,243,614,872		9,927,672			
Assigned	369,548		54,428,831,165		9,836,643			
Cities	306,750		46,222,535,363					
Unincorporated	62,798		8,206,295,802					
Unassigned	36,102		2,814,783,707		91,029	(Bookmobile, HQ)		

City of Milpitas

455 E. Calaveras Blvd., Milpitas, CA 95035

www.ci.Milpitas.ca.gov



June 22, 2005

TO: PROSPECTIVE CONSULTANTS

**SUBJECT: REQUEST FOR PROPOSAL (RFP) – LIBRARY SERVICE
ALTERNATIVES STUDY FOR THE CITY OF MILPITAS**

The City of Milpitas is seeking Proposals from individuals or firms to prepare a study of library service alternatives.

Interested parties should submit five (5) printed copies of the Proposal, as well as one digital copy (MS-Word format preferred). **Proposals must be received no later than 2:00 p.m., on Wednesday, August 3, 2005.**

Any Proposal received after the deadline will not be eligible.

Address or deliver Proposals to:

Chris Schroeder, Purchasing Agent
455 E. Calaveras Blvd.
Milpitas, CA 95035-5479

(408) 586-3161
cschroeder@ci.milpitas.ca.gov

I. PROJECT DESCRIPTION

The City of Milpitas (City) is seeking statements of professional qualifications to prepare a study of library service alternatives. The project will include a review of current services and evaluation of alternative service delivery models.

II. PURPOSE

To provide basic information for the Milpitas City Council about the quality and effectiveness of current library services, analysis of alternative library operating models, and identification of major issues that should be addressed regarding library operations. The City Council will use the information and analysis contained in the report to help them determine if the Milpitas Library should operate under a different governing structure.

III. BACKGROUND

A. *The City*

The City of Milpitas is located near the southern tip of San Francisco Bay, forty-five miles south of San Francisco. With a population over 65,000, Milpitas is a progressive community that is an integral part of the high tech Silicon Valley. Milpitas features quality schools, conveniently located neighborhood parks and shopping centers and a population rich in diversity.

Incorporated in 1954, Milpitas is a general law city operating under the City Council/City Manager form of government with over 600 employees. Milpitas is a creative, forward-thinking city providing quality police, fire, water, streets, parks, engineering, planning and recreation services.

Milpitas is an affluent community. The 2000 U.S. Census reported the median family household income in Milpitas was \$93,531. More than 70% of Milpitas households have an annual income that exceeds \$50,000. The homeownership rate is 73% with a median home value of \$429,000. Though home prices increased 4.6% during 2002, Milpitas' housing market remains affordable relative to the majority of Santa Clara County. Milpitas residents are also well educated with more than a third having a college or graduate degree.

Milpitas is an ethnically diverse community. In 2000, Asians constituted 52% of the population with Filipino the largest Asian group at 15%. Caucasians were 24%, Hispanic 17% and African-American were 3%.

Milpitas has a large daytime population of over 62,000 workers. The two largest employers in Milpitas are Cisco Systems and Lifescan, Inc. with over 2,500 employees apiece.

Milpitas is often called the "Crossroads of Silicon Valley" with most of its 14.5 square miles of land situated between two major freeways (I-880 and I-680), State Route 237, and a county expressway. A new light rail line will open for service in 2004 and an extension of BART, with a major multi-modal station, is in the planning stages.

B. Library Services

Milpitas library services are provided by the Santa Clara County Free Library District. The District serves 400,000 residents, nine cities and the unincorporated County. The District is governed by a JPA with an eleven member Board of Directors. Milpitas has one seat and one vote on the Board. The JPA oversees the District budget and sets operational policies for all District libraries.

The District's current operating budget is \$25.7 million. Property taxes fund almost 60 percent of the budget. A benefit assessment (parcel tax) funds another 21% and will expire in July 2015.

The existing 19,500 square foot library building is owned by the City of Milpitas. The City is designing a new 60,000 square foot library to be completed in 2008.

Operating data for the Milpitas Library for Fiscal Year 2003-04:

1,977,003	Circulation	717,713	Visitors
181,553	Collection Size	60	Hours of operation per week
35	FTE		

C. Project History

Over the years, the Milpitas City Council has periodically discussed the concept of withdrawing from the Library District and operating an independent city library. In Fall 2004, the District closed all libraries on Monday as a cost-savings measure. The District declined to consider allowing member cities, such as Milpitas, to provide supplemental funding to keep their local libraries open on Mondays. The Milpitas Council directed staff to begin investigating alternatives for providing library services.

D. Major Issues

Uncertain funding: Library services are supported by funding from a variety of revenue sources. There is considerable uncertainty about funding because of the volatile State budget and slow economy.

Local control: As a member of the JPA contracting for County library services, member jurisdictions do not have absolute authority over operating hours and policies. A significant issue arose in Fall 2004 when the District closed all libraries on Monday and declined to consider Milpitas' interest in providing supplemental funding to keep the Milpitas Library open on Mondays.

Community support: As the Library building project has progressed, interest from the general public has grown. Clearly, Milpitas residents highly value their library services.

However, there may be reluctance to support fundraising activities on the library's behalf. Organized efforts have experienced no growth: the Friends of the Milpitas Library (FOML) maintains the relatively same fundraising activity level as in past years. Additionally, there has been little community interest to form a library foundation to support the building project.

A recent election may also be an indicator of community support for directly funding library services. Milpitas voters did not support two ballot measures that were on the May 2005 election. In fact, of the ten cities and unincorporated area in the Library District, Milpitas was the only jurisdiction whose voters defeated a request to reauthorize the existing parcel tax due to sunset on July 1, 2005. As indicated in the Table below, Measure A easily passed elsewhere in the district so the parcel tax will continue for another ten years.

A related item on the ballot, known as Measure B, asked voters if the parcel tax should be increased. Measure B was unable to obtain the required two-thirds majority from District voters. Again, though, of all JPA jurisdictions, Milpitas had the weakest support of Measure B. Milpitas' special election results may have been affected by a similar parcel tax measure that the Milpitas Unified School District had on the ballot just two months before.

Special Election Results – May 3, 2005

Jurisdiction	Measure A % Support	Measure B % Support	Voter Turnout
Campbell	75.73%	67.51%	33.1%
Campbell	69.72%	60.30%	38.2%
Gilroy	68.88%	61.83%	32.1%
Los Altos	83.18%	75.84%	48.9%
Los Altos Hills	81.09%	74.30%	44.4%
Milpitas	60.30%	53.57%	29.2%
Monte Sereno	74.08%	64.99%	41.2%
Morgan Hill	75.07%	67.74%	36.1%
Saratoga	73.31%	64.34%	44.9%
Unincorporated	68.18%	60.85%	31.0%
Total	72.04%	64.23%	36.04%

IV. SCOPE OF WORK

On a conceptual level, the scope of work in this project will include:

- Development of a detailed project workplan and schedule that includes major tasks, milestones and decision points;
- Development of a report that evaluates alternative operating structures for the Milpitas library. The report will include identification of additional capital improvements and other significant equipment and supply needs for each model. It should also identify issues, benefits and disadvantages, and funding needs.

A draft scope of work is included with this RFP package as Exhibit A to the attached Consultant Agreement. The draft Scope of Services is considered a minimum for this project. It is anticipated that submitted Proposals will include suggested modifications or augmentations to the draft Scope of Services based on the Consultant's knowledge and experience in similar projects.

V. SUBMITTAL REQUIREMENTS

Submittal Deadline: **Wednesday, August 3, 2005, 2:00 p.m.**

Submit Proposals to: **Chris Schroeder, Purchasing Agent
455 E. Calaveras Blvd.
Milpitas, CA 95035-5479**

Proposal Media: **Five copies of the Proposal and one digital copy in MS-Word or pdf format, must be received by the submittal deadline. Faxed versions of the submittal will not be accepted.**

Proposal Format and Content:

1. No more than 12 pages in length using at least 12-point type size. Appendix of no more than 8 pages including resumes of key project staff and descriptions of similar project experience.
2. Legal name, mail address, email address, telephone number and web page address of the respondent, if available.
3. List of similar projects completed within the last three years. Provide a description of each project and a reference contact.
4. List of key staff and a description of their role, and recent past experience, particularly with providing similar services.
5. Brief description of the project, discussion of its objectives and scope, identification of potential major issues and a conceptual work program outlining a recommended process.
6. Estimated project budget by tasks and hourly rates of assigned staff.

7. Explanation of how the project could be accommodated with the respondent's current and future work program and resources.
8. Name, mail address, email address, phone numbers and web page addresses for all firms and staff associated with the proposal.
9. Identification of one principal staff who will lead the project. The lead will not change during the course of the project without City approval.

VI. SELECTION CRITERIA

Submitted Proposals will be evaluated based on the:

- A. Understanding of local government and library operations, costs and funding, research methods, and library service trends.
- B. The experience, competence, and qualifications of the entity and the participating staff successfully providing similar services to public entities.
- C. Understanding of the requested services and appropriateness of conceptual work program.
- D. Ability to perform the work in a timely manner, availability of staff and contingency plans.
- E. Cost.

VII. PROCESS AND SCHEDULE

RFP Issued	June 22, 2005
Deadline to submit Proposals	August 3, 2005
Consultants selected for interviews	August 17, 2005
Interviews conducted	Week of August 29, 2005
Consultant agreement approved by Council	October 4, 2005

VIII. ADDITIONAL NOTES

1. The City of Milpitas will select the most qualified consultant to provide services for this project.
2. Proposals are welcomed from individuals, firms, agencies, or academic institutions.
3. The consultant is expected to provide complete, professional, high-quality services and products; to provide consultation and work with the City staff, elected and appointed officials, the public and others who are involved with the project; and to provide expertise, guidance, advice, and assistance in accomplishing the work.
4. The City of Milpitas reserves the right to modify or cancel this RFP, to modify and reissue this RFP and to invite other entities to respond to the RFP.

5. Upon selection of the Consultant, the City will negotiate a detailed project Scope of Services prior to contract award.

IX. OTHER AVAILABLE INFORMATION

Available on the City's web page (www.ci.milpitas.ca.gov)

- Milpitas Library Needs Assessment (online)
- Milpitas Library Building Program

Available from staff:

- Milpitas Library Schematic Design
- Current Milpitas Library Building Lease
- Santa Clara County JPA Agreement
- Santa Clara County Library District Budget(s)

X. QUESTIONS

Any questions regarding the technical aspects of this Request For Proposals should be directed to:

Cynthia Maxwell
Principal Administrative Analyst
455 E. Calaveras Blvd.
Milpitas, CA 95035-5479
(408) 586-3282
cmaxwell@ci.milpitas.ca.gov

Any questions regarding submittals for this Request For Proposals should be directed to:

Chris Schroeder, Purchasing Agent
455 E. Calaveras Blvd.
Milpitas, CA 95035-5479
(408) 586-3161
cschroeder@ci.milpitas.ca.gov

**Deadline to submit Proposals
2:00 p.m., August 3, 2005**

CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF MILPITAS AND

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and _____ ("Consultant") as of _____, 2005.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on _____, 2006, or the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit B shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a guaranteed maximum price not to exceed \$ _____ for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner

specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

2.3 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

- 2.4 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.
- 2.5 **Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not _____. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.
- 2.6 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.
- 2.7 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.
- 2.8 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.2 Commercial General and Automobile Liability Insurance.

- 4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to

property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3 Professional Liability Insurance. If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION

DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3.3 The policy must contain a cross liability clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 **Requirements for All Policies.**

4.4.1 **Acceptability of Insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

4.4.3 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

4.4.5 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.6 Waiver. The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from

and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1 Immediate cancellation of the Agreement;
 - 8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and
 - 8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the

documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 **Contract Administration.** This Agreement shall be administered by Cynthia Maxwell, who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.** Any written notice to Consultant shall be sent to:

Any written notice to City shall be sent to:
Cynthia Maxwell
455 East Calaveras Boulevard
Milpitas, California 95035

10.12 Integration. This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

10.13 Exhibits. All exhibits referenced in this Agreement are incorporated by reference herein.

- Continued on next page -

CITY OF MILPITAS

CONSULTANT

Charles Lawson, Acting City Manager

ATTEST:

Mary Lavelle, City Clerk

Taxpayer Identification Number

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

APPROVED AS TO CONTENT:

Cynthia Maxwell, Principal Analyst

APPROVED:

Emma Karlen, Finance Director/Risk Manager

EXHIBIT A
DRAFT Scope of Services

Milpitas Library Service Study

PURPOSE

To provide basic information for the Milpitas City Council about the quality and effectiveness of current library services, analysis of alternative library operating models, and identification of major issues that should be addressed regarding library operations. The City Council will use the information and analysis contained in the report to help them determine if the Milpitas Library should operate under a different governing structure.

SCOPE OF SERVICES

1. Current Operations - Review and evaluate current Milpitas library services provided by the Santa Clara County Library System. The evaluation will include:
 - a. Costs, customer services levels, collection quality and composition, programming, literacy services, bookmobile, administration, materials acquisition and maintenance services, technology services, staffing levels, governance, funding.
 - b. Review and comment on the findings of the 2005 Library Analysis Report prepared by the Milpitas City Manager's Office.
2. Alternatives – Consider alternative structures which the Milpitas Library might operate under in California. Evaluate and outline the benefits and liabilities of at least three optimum models. Among the models, should be the current library operations provided by the Santa Clara County Library System.

For each alternative:

- a. Assume the completion of the library building project with expanded facilities, and new or modified functions (i.e., meeting rooms, history collection) and services.
- b. Identify and describe at least one existing successful example, preferably located in Northern California.
- c. Identify and describe governance, operational, and funding issues.
- d. Develop a five year revenue projection. Identify potential revenue sources. Describe funding issues and opportunities.
- e. Estimate operating costs including capital expenditures for short term (five years) and long term (ten years).
- f. Evaluate benefits and liabilities.
- g. Consider the need and feasibility for related services: literacy, bookmobile, facility scheduling (meeting rooms), etc.

3. Issues - Provide background and discussion of:
 - a. Current and future public library technology needs, including bar code/RFID, and automated sorting systems. Provide an overview of issues and ranges of costs.
 - b. Other major issues that should be considered when evaluating the provision of public library services in California.
4. Deliverables
 - a. Time schedule
 - b. Evaluation of current library services
 - c. List of proposed system models
 - d. Administrative Draft model analysis
 - e. Draft model analysis
 - f. Final model analysis
 - g. Issue papers
 - h. Digitized public presentation
5. Meetings
 - a. Staff – Five
 - b. Library Advisory Commission – One
 - c. City Council - One

PROJECT TIMETABLE

Date	Activity
June	Council approves scope of services and budget appropriation
July	RFP is issued
August	Consultant responses are due
Aug. - September	Interviews and consultant selection
October	Council approves consultant selection & agreement Agreement becomes effective
Nov. – Feb.	Consultant prepares draft report
Feb. – March	Administrative review and report finalized
March, April	Report reviewed by Library Advisory Commission and City Council

DRAFT 1
6/9/05

EXHIBIT B

Milpitas Library Service Study Compensation

To be inserted:

Names and titles of personnel performing services (Section 1.3)

Hourly Rates (Section 2 and 2.5)

Reimbursable Expenses (Section 2.5)

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one: <input checked="" type="checkbox"/> Budget Appropriation <input type="checkbox"/> Budget Transfer	102-2940	\$60,000	102-111-4237	\$60,000

Explain the reason for the budget change:

The City Council requested staff prepare a report on library operations and on alternatives to the current operating arrangement with the Santa Clara County Library Joint Powers Authority (JPA). In a memo dated February 19, 2005, staff outlined the contents of the requested report and recommended that further financial and operation analysis be obtained from outside professionals with expertise in library funding, costs, and operations.

The staff report updates a previous report in 2003 on library operations. It describes the JPA's organization, budget and funding formula. It also compares the Milpitas library to four other similar sized libraries: Cerritos, Mountain View, Pleasanton and Sunnyvale. The report identifies major issues associated with the library as (1) funding uncertainties, (2) local control, and (3) community support.

The project's purpose is to provide information the City Council can use to evaluate current operations and help determine if the Milpitas Library should operate under a different governing structure. The scope of services includes a review of current operations, identification of alternative operating models, and analysis of major issues. The alternatives will include revenue and expenditure projections for short term (five years) and long term (ten years), evaluation of benefits and liabilities, and consideration of need and feasibility for related services such as literacy, bookmobile, and facility scheduling.

Approve a budget appropriation of \$60,000 for the services of a library consultant to conduct a study of library operations alternatives.

☒ Check if City Council Approval required.

Meeting Date: June 21, 2005

Itemization of funds, if needed:			Amount
Requested by:	Division Head:	Date:	
	Department Head:	Date:	
Reviewed by:	Finance Director: <i>Paul C. Kahl</i>	Date: 6/1/05	
Approved by:	City Manager:	Date:	
Date approved by City Council, if required:		Confirmed by:	